

## **IC 36-8-7**

### **Chapter 7. 1937 Firefighters' Pension Fund**

#### **IC 36-8-7-1**

##### **Application of chapter**

Sec. 1. (a) This chapter applies to pension benefits for members of fire departments hired before May 1, 1977, in units for which a 1937 fund was established before May 1, 1977.

(b) A firefighter with twenty (20) years of service is covered by this chapter and not by IC 36-8-8 if he:

- (1) was hired before May 1, 1977;
- (2) did not convert under IC 19-1-36.5-7 (repealed September 1, 1981); and
- (3) is rehired after April 30, 1977, by the same employer.

(c) A firefighter is covered by this chapter and not by IC 36-8-8 if he:

- (1) was hired before May 1, 1977;
- (2) did not convert under IC 19-1-36.5-7 (repealed September 1, 1981);
- (3) was rehired after April 30, 1977, but before February 1, 1979; and
- (4) was made, before February 1, 1979, a member of a 1937 fund.

*As added by Acts 1981, P.L.309, SEC.57. Amended by P.L.3-1990, SEC.130; P.L.170-2002, SEC.162.*

#### **IC 36-8-7-2**

##### **"Fire company" defined**

Sec. 2. As used in this chapter, "fire company" means each organization or group doing duty as part of the fire department, including engine companies, hose companies, those in the telephone or telegraph service, inspectors, mechanics, watchmen, and others in charge of apparatus for extinguishing fires.

*As added by Acts 1981, P.L.309, SEC.57.*

#### **IC 36-8-7-2.5**

##### **Qualification of 1937 fund under Internal Revenue Code; benefit limitations**

Sec. 2.5. (a) As used in this chapter, "Internal Revenue Code":

- (1) means the Internal Revenue Code of 1954, as in effect on September 1, 1974, if permitted with respect to governmental plans; or
- (2) to the extent not inconsistent with subdivision (1), has the meaning set forth in IC 6-3-1-11.

(b) The 1937 fund shall satisfy the qualification requirements in Section 401 of the Internal Revenue Code, as applicable to the 1937 fund. In order to meet those requirements, the 1937 fund is subject to the following provisions, notwithstanding any other provision of this chapter:

- (1) The local board shall distribute the corpus and income of the 1937 fund to members and their beneficiaries in accordance with

this chapter.

(2) No part of the corpus or income of the 1937 fund may be used or diverted to any purpose other than the exclusive benefit of the members and their beneficiaries.

(3) Forfeitures arising from severance of employment, death, or for any other reason may not be applied to increase the benefits any member would otherwise receive under this chapter.

(4) If the 1937 fund is terminated, or if all contributions to the 1937 fund are completely discontinued, the rights of each affected member to the benefits accrued at the date of the termination or discontinuance, to the extent then funded, are nonforfeitable.

(5) All benefits paid from the 1937 fund shall be distributed in accordance with the requirements of Section 401(a)(9) of the Internal Revenue Code and the regulations under that section. In order to meet those requirements, the 1937 fund is subject to the following provisions:

(A) The life expectancy of a member, the member's spouse, or the member's beneficiary shall not be recalculated after the initial determination, for purposes of determining benefits.

(B) If a member dies before the distribution of the member's benefits has begun, distributions to beneficiaries must begin no later than December 31 of the calendar year immediately following the calendar year in which the member died.

(C) The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of the Internal Revenue Code.

(6) The local board may not:

(A) determine eligibility for benefits;

(B) compute rates of contribution; or

(C) compute benefits of members or beneficiaries;

in a manner that discriminates in favor of members who are considered officers, supervisors, or highly compensated, as prohibited under Section 401(a)(4) of the Internal Revenue Code.

(7) Benefits paid under this chapter may not exceed the maximum benefit specified by Section 415 of the Internal Revenue Code.

(8) The salary taken into account under this chapter may not exceed the applicable amount under Section 401(a)(17) of the Internal Revenue Code.

(9) The local board may not engage in a transaction prohibited by Section 503(b) of the Internal Revenue Code.

(c) Notwithstanding any other provision of this chapter, and solely for the purposes of the benefits provided under this chapter, the benefit limitations of Section 415 of the Internal Revenue Code shall be determined by applying the provisions of Section 415(b)(10) of the Internal Revenue Code, as amended by the Technical and Miscellaneous Revenue Act of 1988. This section constitutes an election under Section 415(b)(10)(C) of the Internal Revenue Code to have Section 415(b) of the Internal Revenue Code, other than Section 415(b)(2)(G) of the Internal Revenue Code, applied without regard to Section 415(b)(2)(F) of the Internal Revenue Code to anyone who did not first become a participant before January 1, 1990.

*As added by P.L.55-1989, SEC.52. Amended by P.L.4-1990, SEC.16.*

### **IC 36-8-7-2.7**

#### **"Americans with Disabilities Act"**

Sec. 2.7. As used in this chapter, "Americans with Disabilities Act" refers to the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments and regulations related to the Act.

*As added by P.L.4-1992, SEC.36.*

### **IC 36-8-7-2.9**

#### **Administration of fund**

Sec. 2.9. The 1937 fund shall be administered in a manner that is consistent with the Americans with Disabilities Act, to the extent required by the Act.

*As added by P.L.4-1992, SEC.37.*

### **IC 36-8-7-3**

#### **Creation of fund; management by board of trustees; powers and duties**

Sec. 3. (a) A firefighters' pension fund to be known as the 1937 fund is established in each unit described by section 1(a) of this chapter.

(b) The 1937 fund shall be managed by a board of trustees (referred to as the "local board" in this chapter) composed of seven (7) trustees. Two (2) trustees are the executive of the unit and the fire chief, who are ex officio voting trustees. The other trustees are one (1) retired member of the fire department and four (4) active members of the fire department elected for the terms and in the manner provided in this chapter.

(c) The local board has control of the 1937 fund of the unit. The local board shall manage, use, and disburse the fund for the purpose and in the manner prescribed by this chapter. The local board may adopt and enforce bylaws that do not conflict with this chapter and are considered necessary to enable it to achieve the purposes for which it was organized. Each trustee shall, before entering upon the duties of his office, take an oath to faithfully perform his duties.

*As added by Acts 1981, P.L.309, SEC.57. Amended by P.L.236-1996, SEC.3.*

### **IC 36-8-7-4**

#### **Fire departments with fewer than five members; trustees; elections**

Sec. 4. (a) If a unit has less than five (5) members in its fire department, the unit may provide for the organization of a local board consisting of the fire chief, the executive of the unit, and one (1) member of the fire department.

(b) The trustee from the fire department shall be elected under this section.

(c) The local board may amend the bylaws of the fund to elect the trustee from the fire department in an election held on any three (3) consecutive days in February specified in the bylaws. The election shall

be called by the fire chief and held at the house or quarters of the fire department. Subject to this section, the election shall be conducted in the manner specified in the bylaws.

(d) This subsection applies only if the local board does not elect to be governed by subsection (c). The trustee from the fire department shall be elected at a meeting held on the second Monday in February each year. The meeting shall be called by the fire chief and held at the house or quarters of the fire department.

(e) The term of the elected trustee is one (1) year beginning immediately after his election.

(f) Each member of the department is entitled to one (1) ballot and the person receiving the highest number of votes is elected. The executive of the unit, the fire chief, and the city or county clerk shall canvass and count the ballots, and the clerk shall issue a certificate of election to the person having received the highest number of votes. If two (2) persons have received the same number of votes, the executive and the chief shall immediately determine by lot who will be the trustee from the persons receiving an equal number of votes.

*As added by Acts 1981, P.L.309, SEC.57. Amended by P.L.170-1994, SEC.1.*

#### **IC 36-8-7-5**

##### **Trustees; election of active members**

Sec. 5. (a) An election shall be held each year under this section to elect one (1) trustee from the active members of the fire department for a term of four (4) years, commencing on the day of his election. The fire chief shall fix a time for holding a convention to nominate candidates for trustees to be elected at each election. Each convention must be held at least five (5) days before the day on which the annual election is held. A convention consists of one (1) delegate from each fire company and one (1) delegate to be selected by the chief and his assistants. The delegate from each fire company shall be elected by ballot by the members of the company at a time to be fixed by the chief in the call for a convention. The election of delegates shall be certified by the captain or other officer of the company, or, if there is not an officer present, then by the oldest member of the company present. The convention, when assembled, shall nominate six (6) members of the fire department to be voted upon as trustees, and the delegates shall report the names of the persons nominated as candidates to their respective companies in writing.

(b) The local board may amend the bylaws of the fund to elect the trustee from the active members of the fire department in an election held on any three (3) consecutive days in February specified in the bylaws. The election shall be called by the fire chief and held at the house or quarters of the respective companies of the fire department. Subject to this section, the election shall be conducted in the manner specified in the bylaws.

(c) This subsection applies only if the local board does not elect to be governed by subsection (b). The election shall be held at the houses or quarters of the respective companies on the second Monday in February between 9 a.m. and 6 p.m.

(d) Each member of a fire company is entitled to one (1) ballot, and the ballot may not contain the names of more than one (1) person, chosen from the six (6) persons nominated by the convention. The candidate receiving the highest number of votes is elected.

(e) The captain or other officer in command of each of the fire companies, immediately after the casting of all ballots, shall canvass and count the ballots. He shall certify in writing the total number of ballots cast and the number of votes received by each candidate for the office of trustee. After signing the certificate, the officer shall enclose it, together with all the ballots cast by the fire company, in an envelope, securely sealed and addressed, and deliver them to the fire chief. The fire chief shall deliver them to the executive of the unit as soon as all certificates and ballots have been received by him. Upon receipt the executive shall, in the presence of the chief and the clerk of the unit, open the envelopes, examine the certificates, and determine the total number of votes cast for each of the candidates. The executive shall then issue a certificate of election to the candidate having received the highest number of votes. If two (2) or more candidates have received the same number of votes, the executive and the chief shall immediately determine by lot who will be trustee from the persons receiving an equal number of votes. An election may not be set aside for lack of formality in balloting by the members or in certifying or transmitting the returns of an election by the officers in charge.

*As added by Acts 1981, P.L.309, SEC.57. Amended by P.L.170-1994, SEC.2.*

### **IC 36-8-7-6**

#### **Trustees; election of retired members**

Sec. 6. (a) An election shall be held under this section every two (2) years to elect one (1) trustee from the retired members of the fire department for a term of two (2) years, commencing on the day of his election, if the retired list contains three (3) or more retired members at the time of election. The fire chief shall fix a time for holding a convention to nominate candidates for trustee to be elected at each election. Each convention must be held at least fifteen (15) days before the day on which the biennial election is held. All retired members of the fire department may participate in the convention. The convention, when assembled, shall nominate not more than four (4) members of the retired list to be voted upon as trustee. The secretary of the board shall mail the names of the persons nominated along with an official ballot to the retired members within forty-eight (48) hours of the end of the convention.

(b) The election shall be conducted by mail. Each retired member is entitled to cast one (1) ballot by mail and the ballot may not contain more than one (1) name, chosen from the list of retired persons nominated by the convention. The candidate receiving the highest number of votes by 6 p.m. on the second Monday in February or an alternative date in February specified in the bylaws of the fund is elected.

(c) The ballots must remain closed and inviolate until the close of the election, at which time, in the presence of the executive of the unit,

the fire chief, and the clerk of the unit, the ballots shall be opened and counted. A certificate of election shall be issued to the candidate receiving the highest number of votes. If two (2) or more candidates receive the same number of votes, the executive and the chief shall immediately determine by lot who will be trustee from the persons receiving an equal number of votes.

*As added by Acts 1981, P.L.309, SEC.57. Amended by P.L.170-1994, SEC.3.*

### **IC 36-8-7-6.5**

#### **Securing of ballots; tampering with ballots**

Sec. 6.5. (a) All ballots voted under this chapter shall be secured until the balloting is closed.

(b) Tampering with a ballot for an election under this chapter is a Class A infraction.

*As added by P.L.170-1994, SEC.4.*

### **IC 36-8-7-7**

#### **Trustees; officers; adoption of rules; duty to hear applications for pensions**

Sec. 7. (a) The fire chief is the president of the local board.

(b) At the first meeting after each election, the local board shall elect a secretary, who may be chosen from among the trustees. However, the local board may consider it proper to have a secretary who is a member of the fire department, to be elected by the companies for a term of four (4) years in the same manner as the election for trustees. The secretary shall keep a full record of all the proceedings of the local board in a book provided for that purpose.

(c) The local board shall make all rules necessary for the discharge of its duties and shall hear and determine all applications for relief or pensions under this chapter.

*As added by Acts 1981, P.L.309, SEC.57.*

### **IC 36-8-7-8**

#### **Derivation of monies in fund**

Sec. 8. The 1937 fund is derived from the following sources:

(1) From all money and other property that is given to the local board or 1937 fund for the uses and purposes for which the fund is created. The local board may take by gift, grant, devise, or bequest any money, personal property, real estate, or an interest in it. The gift, grant, devise, or bequest may be absolute or in fee simple or upon the condition that only the rents, income, or profits arising from it may be applied to the purposes for which the fund is established.

(2) All money, fees, rewards, or emoluments that are paid, given, devised, or bequeathed to the fire department or one (1) of the fire companies.

(3) All money accruing as interest on the securities or investments that are owned by and held in the name of the local board.

(4) All money received by the local board from the sale or by the maturity of securities or investments owned by the local board.

(5) An assessment made during the period of his employment or for thirty-two (32) years, whichever is shorter, on the salary of each member equal to six percent (6%) of the salary of a fully paid first class firefighter. However, the employer may pay all or a part of the assessment for the member. The secretary of the fire department, or the person whose duty it is to make out the payrolls, shall place on the payroll opposite the name of every member the amount of assessment on his salary. The unit's fiscal officer shall deduct monthly from the salary of every member the sum listed opposite his name, other than any amount paid on behalf of the member, and shall credit that amount to the 1937 fund. Except to the extent the assessment is paid on behalf of the member, every person who becomes a member of the fire department is liable for the assessment and is conclusively considered to agree to pay it by having it deducted from his salary as required in this section.

(6) Appropriations that are made for the fund by the unit's fiscal body.

*As added by Acts 1981, P.L.309, SEC.57. Amended by Acts 1981, P.L.182, SEC.6; P.L.312-1989, SEC.2.*

### **IC 36-8-7-9**

#### **Use of funds**

Sec. 9. The 1937 fund and the appropriations made for the fund shall be used exclusively for the following:

- (1) Payments to retired members and the dependents of deceased members.
- (2) Death benefits.
- (3) Other incidental expenses that are authorized by and are essential to the proper administration of this chapter, including the payment of all costs of litigation (including attorney's fees) arising in connection with the 1937 fund.

*As added by Acts 1981, P.L.309, SEC.57. Amended by P.L.349-1987, SEC.1.*

### **IC 36-8-7-10**

#### **Investment of funds**

Sec. 10. (a) The local board shall determine how much of the 1937 fund may be safely invested and how much should be retained for the needs of the fund. Investments are restricted to the following:

- (1) Interest bearing direct obligations of the United States or of the state or bonds lawfully issued by an Indiana political subdivision. The securities shall be deposited with and must remain in the custody of the treasurer of the local board, who shall collect the interest on them as it becomes due and payable.
- (2) Savings deposits or certificates of deposit of a chartered national, state, or mutual bank whose deposits are insured by a federal agency. However, deposits may not be made in excess of the amount of insurance protection afforded a member or investor of the bank.
- (3) Shares of a federal savings association organized under 12

U.S.C. 1461, as amended, and having its principal office in Indiana, or of a savings association organized and operating under Indiana statutes whose accounts are insured by a federal agency. However, shares may not be purchased in excess of the amount of insurance protection afforded a member or investor of the association.

(4) An investment made under IC 5-13-9.

(b) All securities must be kept on deposit with the unit's fiscal officer, or county treasurer acting under IC 36-4-10-6, who shall collect all interest due and credit it to the 1937 fund.

(c) The fiscal officer (or county treasurer) shall keep a separate account of the 1937 fund and shall fully and accurately set forth a statement of all money received and paid out by him. The officer shall, on the first Monday of January and June of each year, make a report to the local board of all money received and distributed by him. The president of the local board shall execute the officer's bond in the sum that the local board considers adequate, conditioned that he will faithfully discharge the duties of his office and faithfully account for and pay over to the persons authorized to receive it all money that comes into his hands by virtue of his office. The bond and sureties must be approved by the local board and filed with the executive of the unit. The local board shall make a full and accurate report of the condition of the 1937 fund to the unit's fiscal officer on the first Monday of February in each year.

(d) All securities that were owned by and held in the name of the local board on January 1, 1938, shall be held and kept for the local board by the unit's fiscal officer (or county treasurer) until they mature and are retired. However, if an issue of the securities is refunded, the local board shall accept refunding securities in exchange for and in an amount equal to the securities refunded. All money received by the local board for the surrender of matured and retired securities shall be paid into and constitutes a part of the 1937 fund of the unit, as provided in section 8 of this chapter.

(e) Investments under this section are subject to section 2.5 of this chapter.

*As added by Acts 1981, P.L.309, SEC.57. Amended by P.L.55-1989, SEC.53; P.L.79-1998, SEC.109; P.L.35-1999, SEC.9.*

### **IC 36-8-7-11**

#### **Members retiring due to disability or inability to perform essential functions of job; monthly benefit**

Sec. 11. (a) Benefits paid under this section are subject to section 2.5 of this chapter.

(b) If a member of the fire department becomes seventy (70) years of age or is found upon examination by a medical officer to be physically or mentally disabled and unable to perform the essential functions of the job, considering reasonable accommodation to the extent required by the Americans with Disabilities Act, so as to make necessary the person's retirement from all service with the department, the local board shall retire the person.

(c) The local board may retire a person for disability only after a

hearing conducted under IC 36-8-8-12.7.

(d) If after the hearing the local board determines that a person who became disabled before July 1, 2000, is disabled and unable to perform the essential functions of the job, considering reasonable accommodation to the extent required by the Americans with Disabilities Act, the local board shall then authorize the monthly payment to the person from the 1937 fund of an amount equal to fifty-five percent (55%) of the salary of a fully paid first class firefighter in the unit at the time of the payment of the pension. All physical and mental examinations of members of the fire department shall be made on order of the local board by a medical officer designated by the local board.

(e) If after the hearing under this section and a recommendation under section 12.5 of this chapter, the 1977 fund advisory committee determines that a person who becomes disabled after June 30, 2000:

(1) has a disability that is:

(A) the direct result of:

(i) a personal injury that occurs while the fund member is on duty;

(ii) a personal injury that occurs while the fund member is responding to an emergency or reported emergency for which the fund member is trained; or

(iii) an occupational disease (as defined in IC 22-3-7-10), including a duty related disease that is also included within clause (B);

(B) a duty related disease (for purposes of this section, a "duty related disease" means a disease arising out of the fund member's employment; a disease is considered to arise out of the fund member's employment if it is apparent to the rational mind, upon consideration of all of the circumstances, that:

(i) there is a connection between the conditions under which the fund member's duties are performed and the disease;

(ii) the disease can be seen to have followed as a natural incident of the fund member's duties as a result of the exposure occasioned by the nature of the fund member's duties; and

(iii) the disease can be traced to the fund member's employment as the proximate cause); or

(C) a disability presumed incurred in the line of duty under IC 5-10-13; and

(2) is unable to perform the essential functions of the job, considering reasonable accommodation to the extent required by the Americans with Disabilities Act;

the local board shall then authorize the monthly payment to the person from the 1937 fund of an amount equal to fifty-five percent (55%) of the salary of a fully paid first class firefighter in the unit at the time of the payment of the pension. All physical and mental examinations of members of the fire department shall be made on order of the local board by a medical officer designated by the local board.

(f) If after the hearing under this section and a recommendation under section 12.5 of this chapter, the 1977 fund advisory committee

- determines that a person who becomes disabled after June 30, 2000:
- (1) has a disability that is not a disability described in subsection (e)(1); and
  - (2) is unable to perform the essential functions of the job, considering reasonable accommodation to the extent required by the Americans with Disabilities Act;

the local board shall then authorize the monthly payment to the person from the 1937 fund of an amount equal to fifty-five percent (55%) of the salary of a fully paid first class firefighter in the unit at the time of the payment of the pension. All physical and mental examinations of members of the fire department shall be made on order of the local board by a medical officer designated by the local board.

*As added by Acts 1981, P.L.309, SEC.57. Amended by P.L.364-1983, SEC.3; P.L.199-1984, SEC.2; P.L.38-1986, SEC.4; P.L.55-1989, SEC.54; P.L.311-1989, SEC.3; P.L.4-1992, SEC.38; P.L.197-1993, SEC.3; P.L.40-1997, SEC.6; P.L.118-2000, SEC.10; P.L.246-2001, SEC.14; P.L.185-2002, SEC.7.*

## **IC 36-8-7-12**

### **Repealed**

*(Repealed by P.L.196-1988, SEC.5.)*

## **IC 36-8-7-12.1**

### **Members retiring with 20 years service**

Sec. 12.1. (a) Benefits paid under this section are subject to section 2.5 of this chapter.

(b) A member who has been in service twenty (20) years, upon making a written application to the fire chief, may be retired from all service with the department without a medical examination or disability. Except as provided in subsection (f), the local board shall authorize the payment to the retired member of fifty percent (50%) of the salary of a fully paid first class firefighter of the unit at the time of the payment of the pension, plus:

- (1) for a member who retires before January 1, 1986, two percent (2%) of that salary for each year of service; or
- (2) for a member who retires after December 31, 1985, one percent (1%) of that salary for each six (6) months of service; over twenty (20) years. However, the pension in one (1) year may not exceed an amount greater than seventy-four percent (74%) of the salary of a fully paid first class firefighter.

(c) A member who is discharged from the fire department after having served at least twenty (20) years is entitled to receive the amount equal to the amount that the member would have received if the member retired voluntarily.

(d) All pensions in a class are on an equal basis. The local board may not depart from this chapter in authorizing the payment of pensions.

(e) The monthly pension payable to a member may not be reduced below the amount of the first full monthly pension received by that person.

(f) The monthly pension payable to a member who is transferred

from disability to regular retirement status may not be reduced below fifty-five percent (55%) of the salary of a fully paid first class firefighter in the unit at the time of the payment of the pension.

(g) A benefit payable under this section shall be paid in not less than twelve (12) monthly installments.

(h) A fund member who is receiving disability benefits under this chapter shall be transferred from disability to regular retirement status when the member becomes fifty-five (55) years of age.

*As added by P.L.196-1988, SEC.2. Amended by P.L.1-1989, SEC.71; P.L.55-1989, SEC.55; P.L.171-1990, SEC.2; P.L.197-1993, SEC.4; P.L.52-1993, SEC.4; P.L.1-1994, SEC.179; P.L.231-1997, SEC.3; P.L.40-1997, SEC.7; P.L.118-2000, SEC.11.*

## **IC 36-8-7-12.2**

### **Members dying other than in line of duty**

Sec. 12.2. (a) This section applies to an active or retired member who dies other than in the line of duty (as defined in section 12.4 of this chapter).

(b) If a member of the fire department or a retired member of the 1937 fund dies and leaves:

- (1) a surviving spouse;
- (2) a child or children less than eighteen (18) years of age;
- (3) a child or children at least eighteen (18) years of age who are mentally or physically incapacitated; or
- (4) a child or children less than twenty-three (23) years of age who are:

(A) enrolled in and regularly attending a secondary school; or

(B) full-time students at an accredited college or university;

the local board shall authorize the payment to the surviving spouse and to the child or children the amount from the fund as prescribed by this section. If the surviving spouse of a deceased member remarried before September 1, 1983, and pension benefits ceased on the date of remarriage, the benefits for the surviving spouse shall be reinstated on July 1, 1997, and continue during the life of the surviving spouse. If the pension of the surviving spouse of a deceased member has ceased by virtue of the spouse's remarriage, and if the person to whom the spouse has remarried was a retired member of the fire department who was also entitled to a pension, then upon the death of the member to whom the spouse had remarried, the spouse is entitled to receive a pension as the surviving spouse of a deceased member as though the spouse had not been remarried.

(c) If a deceased member of the fire department leaves no surviving spouse or children but leaves a dependent parent, and upon satisfactory proof that the parent was wholly dependent upon the deceased member, the local board shall authorize the monthly payment to the parent from the 1937 fund that is prescribed by this section.

(d) If a member dies while in active service or after retirement:

- (1) the surviving spouse is entitled to receive an amount fixed by ordinance but not less than:

(A) for the surviving spouse of a member who dies before January 1, 1989, thirty percent (30%) of the salary of a fully

paid first class firefighter in the unit at the time of the payment of the pension; and

(B) for the surviving spouse of a member who dies after December 31, 1988, except as otherwise provided in this clause, an amount per month, during the spouse's life, equal to the greater of thirty percent (30%) of the monthly pay of a first class firefighter or fifty-five percent (55%) of the monthly benefit the deceased member was receiving or was entitled to receive on the date of the member's death (these amounts shall be proportionately increased or decreased if the salary of a first class firefighter is increased or decreased); however, if the deceased member was not entitled to a benefit because the member had not completed twenty (20) years of service, for purposes of computing the second amount under this item, the member's benefit is considered to be fifty percent (50%) of the monthly salary of a first class firefighter in the unit at the time of payment of the pension;

(2) the member's children who are:

(A) less than eighteen (18) years of age; or

(B) less than twenty-three (23) years of age if the children are enrolled in and regularly attending a secondary school or are full-time students at an accredited college or university;

are each entitled to receive an amount fixed by ordinance but not less than twenty percent (20%) of the salary of a fully paid first class firefighter in the unit at the time of the payment of the pension; and

(3) each parent of a deceased member who was eligible for a pension is entitled to receive jointly an amount equal to thirty percent (30%) of the salary of a fully paid first class firefighter in the unit at the time of the payment of the pension.

If the local board finds upon the submission of satisfactory proof that a child eighteen (18) years of age or older is mentally or physically incapacitated, is not a ward of the state, and is not receiving a benefit under subdivision (2)(B), the child is entitled to receive the same amount as is paid to the surviving spouse of a deceased firefighter, as long as the mental or physical incapacity continues. A sum paid for the benefit of a child or children shall be paid to the remaining parent, if alive, as long as the child or children reside with and are supported by the parent. If the parent dies, the sum shall be paid to the lawful guardian of the child or children.

(e) The monthly pension payable to a survivor may not be reduced below the amount of the first full monthly pension received by that person.

(f) A benefit payable under this section shall be paid in not less than twelve (12) monthly installments.

*As added by P.L.118-2000, SEC.12.*

### **IC 36-8-7-12.3**

#### **Members dying in line of duty before September 1, 1982**

Sec. 12.3. (a) This section applies to a member who died in the line of duty (as defined in section 12.4 of this chapter) before September 1,

1982.

(b) If a member of the fire department or a retired member of the 1937 fund dies and leaves:

- (1) a surviving spouse;
- (2) a child or children less than eighteen (18) years of age;
- (3) a child or children at least eighteen (18) years of age who are mentally or physically incapacitated; or
- (4) a child or children less than twenty-three (23) years of age who are:

(A) enrolled in and regularly attending a secondary school; or

(B) full-time students at an accredited college or university;

the local board shall authorize the payment to the surviving spouse and to the child or children of the amount from the fund as prescribed by this section. If the surviving spouse of a deceased member remarried before September 1, 1983, and pension benefits ceased on the date of remarriage, the benefits for the surviving spouse shall be reinstated on July 1, 1997, and continue during the life of the surviving spouse. If the pension of the surviving spouse of a deceased member has ceased by virtue of the spouse's remarriage, and if the person to whom the spouse has remarried was a retired member of the fire department who was also entitled to a pension, then upon the death of the member to whom the spouse had remarried, the spouse is entitled to receive a pension as the surviving spouse of a deceased member as though the spouse had not been remarried.

(c) If a deceased member of the fire department leaves no surviving spouse or children but leaves a dependent parent, and upon satisfactory proof that the parent was wholly dependent upon the deceased member, the local board shall authorize the monthly payment to the parent from the 1937 fund that is prescribed by this section.

(d) If a member dies while in active service:

(1) the surviving spouse is entitled to receive an amount fixed by ordinance but not less than thirty percent (30%) of the salary of a fully paid first class firefighter in the unit at the time of the payment of the pension;

(2) the member's children who are:

(A) less than eighteen (18) years of age; or

(B) less than twenty-three (23) years of age if the children are enrolled in and regularly attending a secondary school or are full-time students at an accredited college or university;

are each entitled to receive an amount fixed by ordinance but not less than twenty percent (20%) of the salary of a fully paid first class firefighter in the unit at the time of the payment of the pension; and

(3) each parent of a deceased member who was eligible for a pension is entitled to receive jointly an amount equal to thirty percent (30%) of the salary of a fully paid first class firefighter in the unit at the time of the payment of the pension.

If the local board finds upon the submission of satisfactory proof that a child eighteen (18) years of age or older is mentally or physically incapacitated, is not a ward of the state, and is not receiving a benefit under subdivision (2)(B), the child is entitled to receive the same

amount as is paid to the surviving spouse of a deceased firefighter as long as the mental or physical incapacity continues. A sum paid for the benefit of a child or children shall be paid to the remaining parent, if alive, as long as the child or children reside with and are supported by the parent. If the parent dies, the sum shall be paid to the lawful guardian of the child or children.

(e) The monthly pension payable to a survivor may not be reduced below the amount of the first full monthly pension received by that person.

(f) A benefit payable under this section shall be paid in not less than twelve (12) monthly installments.

*As added by P.L. 118-2000, SEC. 13.*

#### **IC 36-8-7-12.4**

##### **Members dying in line of duty after August 31, 1982**

Sec. 12.4. (a) This section applies to an active member who dies in the line of duty after August 31, 1982.

(b) If a member dies in the line of duty after August 31, 1982, the surviving spouse is entitled to a monthly benefit, during the spouse's lifetime, equal to the benefit to which the member would have been entitled on the date of the member's death, but not less than fifty percent (50%) of the monthly wage received by a fully paid first class firefighter. If the spouse remarried before September 1, 1983, and benefits ceased on the date of remarriage, the benefits for the surviving spouse shall be reinstated on July 1, 1997, and continue during the life of the surviving spouse. If the pension of the surviving spouse of a deceased member has ceased by virtue of the spouse's remarriage, and if the person to whom the spouse has remarried was a retired member of the fire department who was also entitled to a pension, then upon the death of the member to whom the spouse had remarried, the spouse is entitled to receive a pension as the surviving spouse of a deceased member as though the spouse had not been remarried.

(c) If a member dies while in active service, the member's children who are:

- (1) less than eighteen (18) years of age; or
- (2) less than twenty-three (23) years of age if the children are enrolled in and regularly attending a secondary school or are full-time students at an accredited college or university;

are each entitled to receive an amount fixed by ordinance but not less than twenty percent (20%) of the salary of a fully paid first class firefighter in the unit at the time of the payment of the pension.

(d) The surviving children of the deceased member who are eligible to receive a benefit under subsection (c) may receive an additional benefit in an amount fixed by ordinance, but the total additional benefit under this subsection to all the member's children may not exceed a total of thirty percent (30%) of the monthly wage received by a first class firefighter. However, this limitation does not apply to the children of a member who are physically or mentally disabled.

(e) If a deceased member of the fire department leaves no surviving spouse or children but leaves a dependent parent, and upon satisfactory proof that the parent was wholly dependent upon the deceased member,

the local board shall authorize the monthly payment to the parent from the 1937 fund. Each parent of a deceased member who was eligible for a pension under this subsection is entitled to receive jointly an amount equal to thirty percent (30%) of the salary of a fully paid first class firefighter in the unit at the time of the payment of the pension.

(f) For purposes of this section, "dies in the line of duty" means death that occurs as a direct result of personal injury or illness caused by incident, accident, or violence that results from any action that the member, in the member's capacity as a firefighter:

- (1) is obligated or authorized by rule, regulation, condition of employment or service, or law to perform; or
- (2) performs while on the scene of an emergency run (including false alarms) or on the way to or from the scene.

The term includes a death presumed incurred in the line of duty under IC 5-10-13.

(g) If the local board finds upon the submission of satisfactory proof that a child eighteen (18) years of age or older is mentally or physically incapacitated, is not a ward of the state, and is not receiving a benefit under subsection (c)(2), the child is entitled to receive the same amount as is paid to the surviving spouse of a deceased firefighter, as long as the mental or physical incapacity continues. A sum paid for the benefit of a child or children shall be paid to the remaining parent, if alive, as long as the child or children reside with and are supported by the parent. If the parent dies, the sum shall be paid to the lawful guardian of the child or children.

(h) The monthly pension payable to a survivor may not be reduced below the amount of the first full monthly pension received by that person.

(i) A benefit payable under this section shall be paid in not less than twelve (12) monthly installments.

*As added by P.L.118-2000, SEC.14. Amended by P.L.62-2002, SEC.2; P.L.185-2002, SEC.8.*

### **IC 36-8-7-12.5**

#### **Determination whether disability in line of duty**

Sec. 12.5. (a) If a local board determines that a fund member has a temporary or a permanent disability, the local board shall also make a recommendation to the 1977 fund advisory committee concerning whether the disability is:

- (1) a disability in the line of duty (as described in section 11(e)(1) of this chapter); or
- (2) a disability not in the line of duty (a disability other than a disability described in section 11(e)(1) of this chapter).

The local board shall forward its recommendation to the 1977 fund advisory committee.

(b) The 1977 fund advisory committee shall review the local board's recommendation not later than forty-five (45) days after receiving the recommendation and shall then issue an initial determination of whether the disability is in the line of duty or not in the line of duty. The 1977 fund advisory committee shall notify the local board, the safety board, and the fund member of its initial determination.

(c) The fund member, the safety board, or the local board may object in writing to the 1977 fund advisory committee's initial determination under subsection (b) not later than fifteen (15) days after the initial determination is issued. If a written objection is not filed, the 1977 fund advisory committee's initial determination becomes final. If a timely written objection is filed, the 1977 fund advisory committee shall issue a final determination after a hearing. The final determination must be issued not later than one hundred eighty (180) days after the date of receipt of the local board's recommendation.

*As added by P.L.118-2000, SEC.15.*

### **IC 36-8-7-13**

#### **Lump sum death benefit**

Sec. 13. (a) Benefits paid under this section are subject to section 2.5 of this chapter.

(b) Upon the death of a disabled, retired, or discharged member of the fire department who was receiving or entitled to receive a pension at the time of his death, or upon the death of a member in active service at the time of his death, the local board shall authorize and pay out of the 1937 fund at least:

- (1) one thousand five hundred dollars (\$1,500) for a member who dies before September 1, 1984;
- (2) three thousand dollars (\$3,000) for a member who dies after August 31, 1984, and before July 1, 1994;
- (3) six thousand dollars (\$6,000) for a member who dies after June 30, 1994, and before January 1, 1999; and
- (4) nine thousand dollars (\$9,000) for a member who dies after December 31, 1998;

as death benefits.

(c) The death benefit described under this section shall be paid to the following:

- (1) to the surviving spouse;
- (2) if there is no surviving spouse, to the surviving children; and
- (3) if there is no surviving spouse, and if there are no surviving children, to the estate;

of the deceased member and is in addition to other benefits paid to a member or survivor under this chapter.

*As added by Acts 1981, P.L.309, SEC.57. Amended by Acts 1981, P.L.182, SEC.7; P.L.200-1984, SEC.3; P.L.55-1989, SEC.56; P.L.169-1994, SEC.3; P.L.49-1998, SEC.4.*

### **IC 36-8-7-14**

#### **Annual statement of receipts and disbursements; payment of excess expenditures by unit; appropriations**

Sec. 14. (a) The local board shall meet annually and prepare an itemized estimate, in the form prescribed by the state board of accounts, of the amount of money that will be receipted into and disbursed from the 1937 fund during the next fiscal year. The estimated receipts consist of the items enumerated in section 8 of this chapter. The estimated disbursements must be divided into two (2) parts, designated as part 1 and part 2.

(b) Part 1 of the estimated disbursements consists of an estimate of the amount of money that will be needed by the local board during the next fiscal year to defray the expenses and obligations incurred and that will be incurred by the local board in making the payments prescribed by this chapter to retired members, to members who are eligible to and expect to retire during the next fiscal year, and to the dependents of deceased members. Part 2 of the estimated disbursements consists of an estimate of the amount of money that will be needed to pay death benefits and other expenditures that are authorized or required by this chapter.

(c) At the time when the estimates are prepared and submitted, the local board shall also prepare and submit a certified statement showing the following:

- (1) The name, age, and date of retirement of each retired member and the monthly and yearly amount of the payment to which the retired member is entitled.
- (2) The name and age of each member who is eligible to and expects to retire during the next fiscal year, the date on which the member expects to retire, and the monthly and yearly amount of the payment that the member will be entitled to receive.
- (3) The name and the age of each dependent, the date on which the dependent became a dependent, the date on which the dependent will cease to be a dependent by reason of attaining the age at which dependents cease to be dependents, and the monthly and yearly amount of the payment to which the dependent is entitled.
- (4) The amount that would be required for the next fiscal year to maintain level cost funding during the active fund members' employment on an actuarial basis.
- (5) The amount that would be required for the next fiscal year to amortize accrued liability for active members, retired members, and dependents over a period determined by the local board, but not to exceed forty (40) years.

(d) The total receipts shall be deducted from the total expenditures as listed in the itemized estimate. The amount of the excess of the estimated expenditures over the estimated receipts shall be paid by the unit in the same manner as other expenses of the unit are paid, and an appropriation shall be made annually for that purpose. The estimates submitted shall be prepared and filed in the same manner and form and at the same time that estimates of other offices and departments of the unit are prepared and filed.

(e) The estimates shall be made a part of the annual budget of the unit. When revising the estimates, the executive, the fiscal officer, and other fiduciary officers may not reduce the items in part 1 of the estimated disbursements.

(f) The unit's fiscal body shall make the appropriations necessary to pay that proportion of the budget of the 1937 fund that the unit is obligated to pay under subsection (d). In addition, the fiscal body may make appropriations for purposes of subsection (c)(4), (c)(5), or both. All appropriations shall be made to the local board for the exclusive use of the 1937 fund. The amounts listed in part 1 of the estimated

disbursements, if found to be correct and in conformity with the data submitted in the certified statement, are a binding obligation upon the unit. Notwithstanding any other law, neither the county board of tax adjustment nor the department of local government finance may reduce the appropriations made to pay the amount equal to estimated disbursements minus estimated receipts.

*As added by Acts 1981, P.L.309, SEC.57. Amended by P.L.345-1985, SEC.1; P.L.90-2002, SEC.488.*

### **IC 36-8-7-15**

#### **Insufficient funds for appropriations; loans; tax levy to repay loans**

Sec. 15. If the appropriations for any of the purposes contemplated in section 14 of this chapter are exhausted before the end of the fiscal year for which the appropriations have been made, the unit's fiscal body shall make the necessary additional appropriations according to IC 6-1.1-18-5. If the amount of money in the general fund not otherwise appropriated is less than the additional appropriations found to be necessary, the fiscal body shall borrow the necessary money in the manner prescribed by statute for making loans by the unit. A tax shall be levied for the next year sufficient to repay the loan and the interest that has accrued.

*As added by Acts 1981, P.L.309, SEC.57.*

### **IC 36-8-7-16**

#### **Disability retirees; physical examinations; reactivation; hearing; period of disability credited; transcripts, reports, records, and other materials**

Sec. 16. (a) After a member of the fire department has been retired upon pension because of disability, the local board may require the retired member to again be examined by competent physicians or surgeons. After the examination, the local board shall conduct a hearing under IC 36-8-8-12.7 to determine whether the disability still exists and whether the retired member should be continued on the pension roll. However, the retired member remains upon the pension roll until placed back in active service of the department, except in cases of dismissal or resignation.

(b) If a retired member is found after the examination and hearing to be physically able to be placed back in active service of the department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act, the local board shall certify the person's name and that fact to the safety board or other appointing authority. The person shall be placed back on active duty by the appointing authority as soon as the first vacancy occurs.

(c) Time spent receiving disability benefits is considered active service for the purpose of determining retirement benefits until the member has a total of twenty (20) years of service.

(d) To the extent required by the Americans with Disabilities Act, the transcripts, reports, records, and other material compiled to determine the existence of a disability shall be:

- (1) kept in separate medical files for each member; and

(2) treated as confidential medical records.  
*As added by Acts 1981, P.L.309, SEC.57. Amended by Acts 1981, P.L.182, SEC.8; P.L.311-1989, SEC.4; P.L.4-1992, SEC.39.*

### **IC 36-8-7-17**

#### **Eligibility for employment; physical examinations; age requirements**

Sec. 17. (a) The local board may require and provide for a physical examination of applicants for employment in the fire department.

(b) A person who:

- (1) is at least thirty-six (36) years of age; or
- (2) fails to pass the physical examination required by the local board;

may not be appointed, reappointed, or reinstated as a member of the fire department.

*As added by Acts 1981, P.L.309, SEC.57. Amended by P.L.38-1986, SEC.5; P.L.55-1987, SEC.4.*

### **IC 36-8-7-18**

#### **Membership of persons employed on March 2, 1937, in pension fund**

Sec. 18. (a) Notwithstanding section 17 of this chapter, each member of the fire department who was in active service on March 2, 1937, but who was not a member of the firemen's pension fund, is conclusively considered to be a member of the 1937 fund and shall pay, in addition to his previous assessments, the same amount into the 1937 fund for unpaid assessments that he would have paid as assessments if he had been a member of the 1937 fund during all of the years of his service.

(b) A member of the fire department who:

- (1) was in active service on March 2, 1937;
- (2) was a member of the 1937 fund;
- (3) had previous service in the fire department; and
- (4) who was thirty-six (36) years of age or older at the time of his reinstatement or reappointment;

is entitled to all of the benefits of the 1937 fund with all of the years of active service with the fire department counted in determining his eligibility for retirement.

*As added by Acts 1981, P.L.309, SEC.57.*

### **IC 36-8-7-19**

#### **Repealed**

*(Repealed by P.L.38-1986, SEC.8.)*

### **IC 36-8-7-20**

#### **Deposit of funds**

Sec. 20. All money that is collected and received by the local board or an officer of it by virtue of subdivisions (1) through (4) of section 8 of this chapter shall be paid to the unit's fiscal officer (or county treasurer), who shall credit this money to the 1937 fund. The 1937 fund

is a public fund for purposes of IC 5-13.  
*As added by Acts 1981, P.L.309, SEC.57. Amended by P.L.19-1987, SEC.50.*

### **IC 36-8-7-21**

#### **Payments; procedure**

Sec. 21. Payments to beneficiaries and dependents from the 1937 fund shall be made upon a warrant of the unit's fiscal officer upon a verified schedule of beneficiaries and dependents and the amount payable to each. The schedule shall be prepared and verified by the secretary, signed by the president, and countersigned by the secretary of the local board. All other claims shall be signed by the president and countersigned by the secretary and shall be paid upon a warrant of the fiscal officer.

*As added by Acts 1981, P.L.309, SEC.57.*

### **IC 36-8-7-22**

#### **Exemption of fund from judicial process; authorized expenditures**

Sec. 22. The 1937 fund may not be, either before or after an order for distribution to members of the fire department or to the surviving spouses or guardians of a child or children of a deceased, disabled, or retired member, held, seized, taken, subjected to, detained, or levied on by virtue of an attachment, execution, judgment, writ, interlocutory or other order, decree, or process, or proceedings of any nature issued out of or by a court in any state for the payment or satisfaction, in whole or in part, of a debt, damages, demand, claim, judgment, fine, or amercement of the member or the member's surviving spouse or children. The 1937 fund shall be kept and distributed only for the purpose of pensioning the persons named in this chapter. The local board may, however, annually expend an amount from the 1937 fund that it considers proper for the necessary expenses connected with the fund. Notwithstanding any other law, neither the fiscal body, the county board of tax adjustment, nor the department of local government finance may reduce these expenditures.

*As added by Acts 1981, P.L.309, SEC.57. Amended by P.L.90-2002, SEC.489.*

### **IC 36-8-7-23**

#### **Fiscal officer as custodian of fund; liability; accounts**

Sec. 23. The unit's fiscal officer, or county treasurer acting under IC 36-4-10-6, is the custodian of all money belonging to the 1937 fund, and all money belonging to the fund shall be promptly paid to the officer. The officer is liable on his bond for the faithful performance of all duties imposed upon him by this chapter in relation to the fund and for the faithful accounting of all money and securities that come into his possession and belong to the fund. The officer shall keep a separate account of the 1937 fund, which must always show the true condition of the fund.

*As added by Acts 1981, P.L.309, SEC.57.*

#### **IC 36-8-7-24**

##### **Temporary loans; authorization and procedure**

Sec. 24. The local board may, by resolution, authorize temporary loans to be made and effected in anticipation of current revenues of the unit actually levied and in the course of collection for the fiscal year in which the loans are made. The fiscal body of the unit shall by ordinance authorize the temporary loans and the issuance and sale of securities for them in the same manner as prescribed for the unit generally in making temporary loans.

*As added by Acts 1981, P.L.309, SEC.57.*

#### **IC 36-8-7-25**

##### **Items excluded when computing benefits; liability for overpayment**

Sec. 25. (a) Remuneration or allowances for fringe benefits, incentive pay, holiday pay, insurance, clothing, automobiles, firearms, education, overtime, or compensatory time off may not be used in the computation of benefits under this chapter.

(b) If the remuneration or allowances described in subsection (a) were used to compute benefits for a recipient who began receiving benefits before May 2, 1977, this computation may continue only for that recipient and only during the eligibility period for benefits. The unit and the official involved are not liable for making the overpayment, and a recipient is not required to repay the overpayment.

*As added by Acts 1981, P.L.309, SEC.57.*

#### **IC 36-8-7-26**

##### **Special lump sum death benefit in addition to other benefits**

Sec. 26. (a) As used in this section, "dies in the line of duty" has the meaning set forth in section 12.4 of this chapter.

(b) A special death benefit of seventy-five thousand dollars (\$75,000) for a fund member who dies in the line of duty before January 1, 1998, and one hundred fifty thousand dollars (\$150,000) for a fund member who dies in the line of duty after December 31, 1997, shall be paid in a lump sum by the public employees' retirement fund from the pension relief fund established under IC 5-10.3-11 to the following relative of a fund member who dies in the line of duty:

- (1) To the surviving spouse.
- (2) If there is no surviving spouse, to the surviving children (to be shared equally).
- (3) If there is no surviving spouse and there are no surviving children, to the parent or parents in equal shares.

(c) The benefit provided by this section is in addition to any other benefits provided under this chapter.

*As added by P.L.223-1986, SEC.2. Amended by P.L.225-1991, SEC.2; P.L.53-1993, SEC.3; P.L.49-1998, SEC.5; P.L.118-2000, SEC.16; P.L.1-2001, SEC.43.*

#### **IC 36-8-7-27**

##### **Rollover to eligible retirement plan**

Sec. 27. Notwithstanding any other provision of this chapter, to the extent required by Internal Revenue Code Section 401(a)(31), as added by the Unemployment Compensation Amendments of 1992 (P.L.102-318), and any amendments and regulations related to Section 401(a)(31), the 1937 fund shall allow participants and qualified beneficiaries to elect a direct rollover of eligible distributions to another eligible retirement plan.

*As added by P.L.10-1993, SEC.16.*